



# The Commonwealth of Massachusetts

Executive Office of Health and Human Services  
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TO: Early Intervention Program Directors  
RE: Clarification and Guidance on LEA Referrals and SEA Notification  
FROM: Mary Dennehy-Colorusso, Director, Office of Family Rights and Due Process  
Patti Fougere, Assistant Director for Early Childhood Programs  
Jean Shimer, EI Data Manager  
DATE: July 16, 2012

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This memo provides clarification and guidance on the new federal regulations related to the notification to the State Education Authority (SEA ) when a toddler is referred to the Local Education Authority (LEA) for an evaluation to determine eligibility for special education or related services. In Massachusetts the SEA is the Massachusetts Department of Elementary and Secondary Education (DESE).

The Federal Department of Education released the final Part C regulations for Early Intervention programs on September 28, 2011 (becoming effective on October 28, 2011). These regulations reflect changes made to the Individuals with Disabilities Education Improvement Act of 2004, the federal legislation that governs Early Intervention programs.

The new regulations included changes in the procedures associated with the transition of toddlers from early intervention to the public school system (referred to as the Local Education Agency or “LEA”) for special education or related services (for example, physical, occupational or speech therapy). Additionally, the federal regulations added the requirement that the State Education Authority (“SEA” – the Massachusetts Department of Elementary and Secondary Education), be notified of toddlers “potentially eligible” for special education or related services.

*34 CFR 303.209(b)(1)(i) (b) Notification to the SEA and appropriate LEA.*

*(1) The State lead agency must ensure that --(i) Subject to paragraph (b)(2) of this section, not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law;*

A parent who refers his/her toddler for an evaluation to determine eligibility for special education or related services should be informed that the regulations both require and permit the transmission of minimally personally identifiable information from DPH to DESE without consent.

**To whom does this policy apply?**

This policy will apply to a child referred for special education or related services and those children who are considered “potentially eligible” according to the DPH Early Intervention Operational Standards (Transition Policy) and the DESE disability categories (603 CMR 28.02(7)) <http://www.doe.mass.edu/lawsregs/603cmr28.html?section=02#start> ) who do not “opt out” of the notification.

**What information will be sent to the Department of Elementary and Secondary Education?**

The Department of Public Health will notify DESE of the children identified on the Transition Survey System data, excluding the families who opted out. The Department will electronically transmit the child’s name, date of birth, parent’s name(s), address and phone number from this database. No other information such as evaluations, assessments or information from the IFSP will be sent. The data will be transmitted via a secure portal as an encrypted file between the two agencies.

**May a parent make a referral to the LEA for an evaluation to determine eligibility but opt - out of having their information sent to the SEA?** No. DPH will maintain an opt-out policy for parents who choose not to refer a potentially eligible child to the LEA or have minimally personally identifiable information transmitted to DESE. There is no provision in the federal regulations, which allows a parent to have information sent to one entity (the LEA/public school) and not the other (the state education agency). If a referral is made to the public school for an evaluation, the information noted above will be sent to DESE.

**How will DESE use this information?**

The DESE, like DPH uses data in reports required by the federal Department of Education and as part of ongoing monitoring to ensure compliance with state and federal regulations . The information is aggregated and, therefore, does not identify individual children. Some examples of reports given to the federal Department of Education include the following:

- DPH reports the total number of children referred for an evaluation for special education or related services.
- DESE reports the total number of children who were referred from Early Intervention for an evaluation, determined to be eligible and had an IEP in place on their third birthday.

If you have any additional questions, please do not hesitate to contact Mary Dennehy-Colorusso at [mary.dennehy-colorusso@state.ma.us](mailto:mary.dennehy-colorusso@state.ma.us) or 978-851-7261 or Patti Fougere at [patti.fougere@state.ma.us](mailto:patti.fougere@state.ma.us) or 617-624-5975